

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**  
Civil Action No.: 17-cv-23429-MGC

JEFF RODGERS, PATRICIA RODGERS,  
MICHAEL LAVIGNE, JENNIFER LAVIGNE,  
CODY PYLE, JENNIFER RIBALTA, IZAAR  
VALDEZ, FELIX VALDEZ, individually and on  
behalf of all others similarly situated.

Plaintiffs,

v.

HERBALIFE, LTD., et al.,

Defendants.

\_\_\_\_\_ /

**PLAINTIFFS' UNOPPOSED MOTION FOR  
EXTENSION OF CERTAIN PRETRIAL DEADLINES**

Plaintiffs, JEFF RODGERS, PATRICIA RODGERS, MICHAEL LAVIGNE, JENNIFER LAVIGNE, CODY PYLE, JENNIFER RIBALTA, IZAAR VALDEZ, FELIX VALDEZ, individually and on behalf of all others similarly situated, by and through undersigned counsel, pursuant to the Federal Rules of Civil Procedure, hereby file this Unopposed Motion for Enlargement of Extension of Certain Pretrial Deadlines and state as follows:

On January 8, 2018, this Court entered an Order Setting Civil Trial Date and Pretrial Deadlines. *See* D.E. 78. Pursuant to that Order, the deadline to join parties and claims, and amend the pleadings is April 9, 2018.

Currently pending before this Court is Defendants' Motion to Compel Arbitration, which is fully briefed. *See* D.E. 62. Defendants have also filed a Motion to Dismiss and a Motion to Transfer Venue, both of which remain pending as well. *See* D.E. 63, 70.

On February 19, 2018, the undersigned submitted a proposed agreed order to the Court resetting certain deadlines in light of these pending motions and agreed to stay fact discovery until the earlier of 60 days after the parties have fully briefed: (i) Defendants' Joint Motion to Transfer Venue to the Central District of California Pursuant to 28 U.S.C. § 1404(A) [ECF. No. 63] (the "Motion to Transfer") *and* (ii) the Individual Defendants' Motion to Dismiss

[ECF No. 68] *and* (iii) Herbalife's Motion to Dismiss Plaintiffs' Complaint Pursuant to Fed. R. Civ. Proc. 12(b)(6) [ECF No. 70] (collectively, the "Motions to Dismiss"); *or* if the Court denies the Motion to Transfer and the Motions to Dismiss. Attached hereto as **Exhibit A** is a true and correct copy of that proposed order. That order has not yet been entered.

In consideration of this stipulation, the parties have not participated in any fact discovery. The opposition to the Motions to Dismiss has not yet been filed, nor has the opposition to the Motion to Transfer Venue. Accordingly, the case is effectively in a "holding pattern" pending the Court's ruling on a series of potentially case dispositive motions.

Based on the foregoing, Plaintiffs respectfully request that the deadline to join parties and claims, and amend the pleadings be extended for 60 days. Leave to amend should be freely granted and it is within the discretion of the Court to extend its pretrial deadlines. The Plaintiffs have not amended the Complaint and would be unduly prejudiced if they were not permitted to amend the Complaint in the future.

The grant or denial of an opportunity to amend is within the discretion of the district court, however outright refusal to grant the leave without any justifying reason appearing for the denial is not an appropriate exercise of discretion. *See Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 9 L. Ed. 2d 222 (1962). In the absence of any apparent or declared reason the leave sought should, as the rules require, be "freely given." *Id.*; *Sedna Aire USA, Inc. v. Sunologi, Inc.*, No. 15-24753-Civ-COOKE/TORRES, 2016 U.S. Dist. LEXIS 188619, at \*4 (S.D. Fla. Nov. 18, 2016).

Such request is being made in good faith and is not being made for purposes of delay.

**CERTIFICATE OF COMPLIANCE WITH S.D. FLA. L. R. 7.1(a)(3)(A)**

Pursuant to Local Rule 7.1(a)(3)(A), I hereby certify that I, Etan Mark, Esq., counsel for the Plaintiffs, conferred with Todd A. Levine, Esq., counsel for the Defendants, on April 9, 2018 in a good faith effort to resolve the issues raised herein and Mr. Levine represented that Defendants do not object to the relief requested herein.

Dated: April 9, 2018

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 9<sup>th</sup> day of April 2018, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served on all Defendants in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF, by process server or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

By: s/ Etan Mark  
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